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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,123	12/17/2001	Christopher Peter Olson	16,664	5031
23556	7590	11/09/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			LAZOR, MICHELLE A	
		ART UNIT	PAPER NUMBER	
		1734		

DATE MAILED: 11/09/2004

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/026,123
Filing Date: December 17, 2001
Appellant(s): OLSON ET AL.

MAILED

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GROUP 100

Alyssa A. Dukowski
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/30/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-23 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *ClaimsAppealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5779831	Schmitz	7-1998
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6210388	Widlund et al.	4-2001
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5399219

Roessler et al.

3-1995

Fletcher et al. (PCT US 99 29704), (Dec 12, 1999)

Johansson et al. (GB 2303045), (June 28 1996)

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1 – 3, 5, 7, 11 – 14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz (U.S. Patent No. 5779831) in view of Widlund et al. (U.S. Patent No. 6210388).

Regarding Claims 1, 11, and 12, Schmitz discloses a method of making an undergarment having refastenable side seams from a substantially two-dimensional web, the web having two longitudinal sides and a first lateral edge, or two lateral sides and a first longitudinal edge, depending on which is defined as a side or edge, comprising the steps of: transporting the web in a processing direction; cutting the web along a second side or edge to form a two-dimensional pre-form that includes the first and the second lateral edges and the two longitudinal edges; each longitudinal edge having two waist sections and a crotch section located intermediate the waist sections; a sealing or fastening surface located adjacent and inboard on the waist sections; gripping the pre-form adjacent each waist section with a gripping means in four gripping areas, each gripping area being located near a respective refastening surface; jointly rotating at least the gripping means which hold the gripping areas in the region of one of the lateral edges around at least one hinging axis extending substantially parallel to the lateral edges of the pre-form to place the first lateral edge generally parallel ad opposite to the second lateral edge; superimposing the sealing or fastening surfaces in a securing means, thus forming the undergarment; and releasing

the undergarment from the gripping means (column 15, lines 4 – 49); Schmitz also discloses using hook and loop material as mechanical fasteners as an alternative to overlapping seams (column 2, lines 34 – 49), but does not specifically disclose preconditioning the web to include at least four refastening surfaces. However, Widlund et al. disclose preconditioning a web to include hook and loop refastening surfaces before cutting (Figures 1, 2, and 11; column 3, lines 34 – 40; column 4, lines 33 – 40; and column 7, lines 7 – 15). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to precondition the web to include hook and loop refastening surfaces since it is well known in the art to add fasteners to the web before cutting the web into individual diapers.

Regarding Claims 2, 3, 13, and 14, Schmitz discloses the step of forming the web by combining a liquid-impervious backsheet, an absorbent core and a liquid-pervious topsheet, such that the undergarment is an absorbent article (column 15, lines 50 – 54); and wherein the pre-form includes an exterior surface and a body-contacting surface opposite the exterior surface; and the waist sections define a front waist section and a back waist section (Figure 3; column 6, lines 17 – 65).

Regarding Claim 5, Widlund et al. disclose two of the refastening surfaces located on the body-contacting surface of the front waist section and two of the refastening surfaces located on the exterior surface of the back waist section (Figures 11 and 12; column 8, lines 3 – 13). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place two refastening surfaces on the body-contacting surface of the front waist section and two refastening surfaces on the exterior surface of the back waist section since it is

well known and conventional to place the refastening surfaces in a number of configurations along the waist section, including placement as discussed above.

Regarding Claims 7 and 20, Schmitz disclose prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the front waist section of the adjacent pre-form (Figure 24; column 14, lines 1 – 32).

2. Claims 4, 8, and 15 – 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Fletcher et al. (PCT US99 29704).

Regarding Claim 4, Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not specifically disclose two of the refastening surfaces are located on the exterior surface of the front waist section and two of the refastening surfaces are located on the body-contacting surface of the back waist section. However, Fletcher et al. disclose the above configuration (Figures 2 and 3; page 20, line 22 – page 21, line 6). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the refastening surfaces in a number of configurations along the waist section, including placement as discussed above.

Regarding Claim 8, Widlund et al. disclose a step of folding inward a portion of the longitudinal edge of a waist section prior to jointly rotating the gripping means (Figure 12). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward a portion of the longitudinal edge of the front waist section, as disclosed by the fastener configuration of Fletcher et al., prior to jointly rotating the gripping means so that the front and rear side parts thereof are placed edge-to-edge, and the coacting parts (37,38) are pressed firmly against one another (column 8, lines 14 – 27).

Regarding Claims 15 and 16, Fletcher et al. disclose mating hook material (82 and 83) located on the exterior surface of the front waist section, and the areas of loop material (84 and 85) located on the body-contacting surface of the back waist section (Figures 2 and 3; page 20, lines 6 – 21) and disclose mating loop material (82 and 83) located on the exterior surface of the front waist section, and the areas of hook material (84 and 85) located on the body-contacting surface of the back waist section (page 23, lines 9 – 15). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the exterior front waist section or the body-contacting back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

Regarding Claims 17 and 18, Widlund et al. disclose the configuration of fasteners located on the body-contacting surface of the front waist section and fasteners located on the exterior surface of the back waist section (Figures 11 and 12) as discussed above. Fletcher et al. disclose locating the hook material and loop material irrespective of the location of the fasteners (i.e. either two loop in the front waist section and two hook in the back waist section or two hook in the front waist section and two loop in the back waist section). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place the hook and loop materials on either the body-contacting front waist section or the exterior back waist section since it is well known and conventional to place the refastening surfaces in a number of configurations along the waist section as alternative and equivalent embodiments.

3. Claims 6 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Roessler et al. (U.S. Patent No. 5399219).

Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not disclose prior to cutting of the web, portions of the web which form adjacent pre-forms are joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form. However, Roessler et al. disclose this design (Figure 11; column 24, lines 31 – 47). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to design the web to include adjacent pre-forms joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form since this is a well-known and conventional design of a web for making garments as claimed.

4. Claims 9, 10, and 21 – 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz and Widlund et al. as applied in Claims 3 and 14 above, in view of Johansson et al. (GB 2303045).

Regarding Claims 9, 21, and 22, Schmitz and Widlund et al. disclose all the limitations of Claim 3, but do not disclose two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces are located on the body-contacting surface of the back waist section comprising both hook and loop material. However, Johansson et al. disclose two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces located on the body-contacting surface of the back waist section comprising both hook and loop material (Figures 4 and 5; page

17, line 24 – page 18, line 20). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to place two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces are located on the body-contacting surface of the back waist section comprising both hook and loop material to avoid peeling forces and for a simplified manufacturing process (page 17, line 33 – page 18, line 5).

Regarding Claims 10 and 23, Widlund et al. disclose a step of folding inward toward the exterior surface of the pre-form a joined superimposed refastening surfaces and bonding the joined superimposed refastening surfaces to the exterior surface of the pre-form (Figure 5A; column 3, line 66 – column 4, line 11). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to fold inward toward the exterior surface of the pre-form a joined superimposed refastening surface and bond the joined superimposed refastening surfaces to the exterior surface of the pre-form so that the abutted fasteners are not sticking out of the diaper, thereby allowing the fasteners to lay flat against the diaper.

(11) Response to Argument

Regarding the arguments presented in Issue (1), Examiner disagrees with the Applicant. Examiner believes there is sufficient motivation for one in the art to modify Schmitz as discussed above, since it is implicit in the primary reference to add hook and loop fasteners to the diaper or undergarment. Although the manufacturing process disclosed by each of the references are fundamentally different, one in the art wishing to include hook and loop fasteners to a diaper or undergarment would look to see how they are commonly placed onto a diaper. Therefore one in the art would appreciate modifying the Schmitz patent to precondition the web with hook and

loop fasteners, as disclosed by Widlund et al. In other words, the manufacturing process disclosed by Widlund et al. is not what is being referred to, rather the method step of preconditioning the web with hook and loop fasteners.

In addition, the Examiner believes there is reason to have a high expectation of success associated with combining aspects of the Widlund patent with the methods of the Schmitz patent, since both patents are clearly in the same art and both address ways of fastening the diaper or undergarment together, as discussed above.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., methods for manufacturing absorbent articles having "pant-like" configurations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the arguments presented in Issue (2), Examiner disagrees with the Applicant. Examiner believes there is sufficient motivation for one in the art to modify Schmitz as discussed above, since it is implicit in the primary reference to add hook and loop fasteners to the diaper or undergarment. Although the manufacturing process disclosed by each of the references are fundamentally different, one in the art wishing to include hook and loop fasteners to a diaper or undergarment would look to see how they are commonly placed onto a diaper. Therefore one in the art would appreciate modifying the Schmitz patent to precondition the web with hook and loop fasteners, as disclosed by Widlund et al. In other words, the manufacturing process disclosed by Widlund et al. is not what is being referred to, rather the method step of

preconditioning the web with hook and loop fasteners. In addition, it is considered obvious to place refastening surfaces in a number of configurations along the waist section, including that shown by Fletcher, since these configurations are considered to be functionally equivalent embodiments.

In addition, the Examiner believes there is reason to have a high expectation of success associated with combining aspects of the Widlund patent with the methods of the Schmitz patent, since both patents are clearly in the same art and both address ways of fastening the diaper or undergarment together, as discussed above.

Regarding the arguments presented in Issue (3), Examiner disagrees with the Applicant. Examiner believes there is sufficient motivation for one in the art to modify Schmitz as discussed above, since it is implicit in the primary reference to add hook and loop fasteners to the diaper or undergarment. Although the manufacturing process disclosed by each of the references are fundamentally different, one in the art wishing to include hook and loop fasteners to a diaper or undergarment would look to see how they are commonly placed onto a diaper. Therefore one in the art would appreciate modifying the Schmitz patent to precondition the web with hook and loop fasteners, as disclosed by Widlund et al. In other words, the manufacturing process disclosed by Widlund et al. is not what is being referred to, rather the method step of preconditioning the web with hook and loop fasteners. In addition, it is considered obvious to design the web to include adjacent pre-forms joined to each other by the back waist section of one pre-form and the back waist section of the adjacent pre-form since this is a well-known and conventional design of a web for making garments as claimed, as disclosed by Roessler et al.

In addition, the Examiner believes there is reason to have a high expectation of success associated with combining aspects of the Widlund patent with the methods of the Schmitz patent, since both patents are clearly in the same art and both address ways of fastening the diaper or undergarment together, as discussed above.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., methods for manufacturing absorbent articles having "pant-like" configurations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding the arguments presented in Issue (4), Examiner disagrees with the Applicant. Examiner believes there is sufficient motivation for one in the art to modify Schmitz as discussed above, since it is implicit in the primary reference to add hook and loop fasteners to the diaper or undergarment. Although the manufacturing process disclosed by each of the references are fundamentally different, one in the art wishing to include hook and loop fasteners to a diaper or undergarment would look to see how they are commonly placed onto a diaper. Therefore one in the art would appreciate modifying the Schmitz patent to precondition the web with hook and loop fasteners, as disclosed by Widlund et al. In other words, the manufacturing process disclosed by Widlund et al. is not what is being referred to, rather the method step of preconditioning the web with hook and loop fasteners. In addition, it is considered obvious to place two of the refastening surfaces located on the body-contacting surface of the front waist section comprising both hook and loop material and two of the refastening surfaces are located

on the body-contacting surface of the back waist section comprising both hook and loop material to avoid peeling forces and for a simplified manufacturing process (page 17, line 33 – page 18, line 5), as disclosed by Johansson et al.

In addition, the Examiner believes there is reason to have a high expectation of success associated with combining aspects of the Widlund patent with the methods of the Schmitz patent, since both patents are clearly in the same art and both address ways of fastening the diaper or undergarment together, as discussed above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



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November 4, 2004

Conferees
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